

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

GREGORY BAIRD and	)	
MICHELLE BAIRD,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 4:11 CV 1589 DDN
	)	
DOLGENCORP, LLC, and DOLGENCORP	)	
INC.,	)	
	)	
Defendants and	)	
Third Party Plaintiffs,	)	
	)	
v.	)	
	)	
LINCOLN COUNTY SHOPPING CENTER, LLC,	)	
	)	
Third Party Defendant.	)	

**MEMORANDUM AND ORDER**

On July 26, 2012, the court heard oral arguments on the motion of third-party defendant Lincoln County Shopping Center, LLC, for summary judgment (Doc. 57) against defendants and third-party plaintiffs Dolgencorp, LLC, and Dolgencorp, Inc. (Dolgencorp).

Plaintiffs Gregory and Michelle Baird allege several claims against Dolgencorp, including negligently loading the subject trailer and failing to ensure that there was adequate lighting for Gregory Baird to safely unload the trailer. (Doc. 1 at ¶¶ 15-20.) Dolgencorp alleges third-party claims against Lincoln County Shopping Center for common law contribution, contractual indemnity, and breach of contract, based upon several alleged facts, including the allegation that the area where Baird was injured was not sufficiently lit. (Doc. 43 at ¶¶ 7-11.)

In its motion for summary judgment against Dolgencorp, Lincoln County Shopping Center argues that the deposition testimony of plaintiff Gregory Baird eliminates any factual dispute that the lighting, or lack of it, in the area where Baird was allegedly injured was not the cause of his injuries. (Doc. 57.) The court has carefully studied the deposition testimony referred to by Lincoln County Shopping Center with which Gregory Baird described the location of the object that allegedly struck him. (Doc. 56 at 10-11.) As discussed during the hearing, the court concludes that Baird's deposition testimony is not sufficient as a matter of law to eliminate the factual bases for all of the third-party

claims made by Dolgencorp against Lincoln County Shopping Center. His testimony is not sufficiently clear or unequivocal to describe with undisputed certainty the location of the object that struck him, whether on top of the box he was trying to unload or behind it. And his testimony is insufficient to eliminate as a matter of law the lighting or lack of lighting as a sufficient cause of his alleged injuries.

For these reasons, there are genuine disputes as to the material facts regarding the events that led to the claims alleged by plaintiffs and by third-party plaintiffs to preclude summary judgment on this ground. F. R. Civ. P. 56(a). These disputes of material fact must be submitted to a jury.

Therefore,

**IT IS HEREBY ORDERED** that the motion of third-party defendant Lincoln County Shopping Center, LLC, for summary judgment (Doc. 57) against third-party plaintiffs Dolgencorp, LLC, and Dolgencorp, Inc. is denied.

/S/ David D. Noce  
**UNITED STATES MAGISTRATE JUDGE**

Signed on July 27, 2012.